IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

MANU DUBE, Plaintiff/Appellant, v. C. DESAI, INC., an Arizona corporation, Defendant/Appellee.	2 CA-CV 2007-0142 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C 20044924

Honorable Deborah Bernini, Judge

AFFIRMED

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H O W A R D, Presiding Judge.

¶1 Appellant Manu Dube appeals from the trial court's grant of appellee C. Desai, Inc.'s motion for summary judgment on Dube's claim for tortious interference with business expectancies. He contends, inter alia, that the trial court erred by concluding he had not presented sufficient evidence to create a genuine issue of material fact regarding whether he had a valid business expectancy. Finding no genuine issue of material fact, and that C. Desai, Inc. is entitled to judgment as a matter of law, we affirm.[1]

¶2 On appeal from a summary judgment, we review "*de novo* whether there are any genuine issues of material fact and whether the trial court erred in applying the law." *Bothell v. Two Point Acres, Inc.*, 192 Ariz. 313, ¶ 8, 965 P.2d 47, 50 (App. 1998). We view the evidence in the light most favorable to Dube, the nonmoving party, resolving all reasonable inferences in his favor. *See Miller v. Hehlen*, 209 Ariz. 462, ¶ 2, 104 P.3d 193, 195 (App. 2005). If Dube failed to provide sufficient evidence of a valid business expectancy, his claim must fail. *See Marmis v. Solot Co.*, 117 Ariz. 499, 502, 573 P.2d 899, 902 (App. 1977) (valid business expectancy required to establish prima facie case of tortious interference); *see also Gorney v. Meaney*, 214 Ariz. 226, ¶ 17, 150 P.3d 799, 805 (App. 2007) (plaintiff must establish prima facie case to avoid summary judgment).

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[1]Dube also claims the trial court erred in granting C. Desai, Inc.'s motion to strike portions of Dube's statement of facts. But, even assuming all the evidence Dube presented was admissible, there is no genuine issue of material fact regarding business expectancies. Accordingly, we need not decide whether the trial court erred in granting the motion to strike. *See Washburn v. Pima County*, 206 Ariz. 571, ¶ 7, 81 P.3d 1030, 1034 (App. 2003) ("[W]e will affirm the judgment if it was correct for any reason.").

¶3 Dube first contends he had an expectancy in receiving his doctorate in December 2002, and it was delayed until May 2004 due to C. Desai, Inc.'s interference. But a business expectancy must be a prospective "'business relation with another.'" *Edwards v. Anaconda Co.*, 115 Ariz. 313, 315, 565 P.2d 190, 192 (App. 1977), *quoting* Restatement of Torts § 766 (1939). This legal definition is narrower than a general, subjective expectation, and an educational degree does not, by itself, fall within the legal definition. Additionally, Dr. Chandra Desai's agreement to give Dube a letter stating he expected Dube to graduate in 2002 does not make Dube's degree a business relationship with another. Accordingly, we reject this argument.[2]

¶4 Dube next claims he had an expectancy in working for Intel after graduation. He offered the following evidence in support of this contention: his former advisor from another university, Dr. Terry Dishongh, is now employed at Intel and had given his business card to Dube while visiting him, telling Dube to "stay in touch"; Dishongh had written Dube a favorable recommendation letter before Dube transferred to the University of Arizona; and Dube had participated in a career fair as a student, in which he had inquired about

[2]Dube also appears to argue that he had a separate business expectancy in publishing his dissertation. But, in the trial court, Dube contended he had an expectancy in receiving his doctorate and in employment. He did not separately contend that he had a business expectancy in publishing his dissertation. Because he failed to raise this issue in the trial court, it is waived. *See Orfaly v. Tucson Symphony Soc'y*, 209 Ariz. 260, ¶ 15, 99 P.3d 1030, 1035 (App. 2004).

employment with Intel representatives, given them a résumé, and told them he knew Dishongh.

¶5 In deposition testimony, however, Dube admitted that the résumé he had submitted was not an employment application and that he had never applied to Intel for employment. And, although Dube alleged in conclusory fashion that Dishongh had "implied" to him that Intel would hire him, his only evidence for this implication was the business card and positive recommendations Dishongh had given him before he transferred to the University of Arizona. He presented no evidence that Dishongh was involved in hiring employees, that Intel had any job openings in his field, or that Intel had shown interest in hiring him. Thus, although he identified a specific employer with whom he was interested in working, he provided no evidence that he had a prospective relationship with that employer. *See Dube v. Likins*, 216 Ariz. 406, ¶ 19, 167 P.3d 93, 101 (App. 2007); *cf. Nowik v. Mazda Motors of Am. (East) Inc.*, 523 So. 2d 769, 771 (Fla. Dist. Ct. App. 1988) (finding valid expectancy where plaintiff had successfully interviewed with potential employer, and potential employer's decision not to hire plaintiff based solely on negative reference from defendant). He therefore failed to allege a valid business expectancy with Intel.

¶6 Dube last argues he had a general expectancy of employment because he had received his doctorate with a 4.0 grade point average and had submitted résumés to universities and "numerous industries." But he interviewed with none of these institutions

and provided no evidence that any of them had been interested in hiring him. Indeed, in deposition testimony, Dube could recall that some of the universities had denied him an interview because the positions he was seeking had been filled. He could recall no other reason for having been denied interviews. Again, Dube provides no evidence of the required prospective relationship. *See Dube*, 216 Ariz. 406, ¶ 22, 167 P.3d at 101. This argument therefore fails.

¶7 Even assuming all the facts, as opposed to assumptions and legal conclusions, Dube presented were admissible, he has failed, as a matter of law, to present a prima facie case that he had a valid business expectancy. *See Gorney*, 214 Ariz. 226, ¶ 17, 150 P.3d at 805 (plaintiff must establish prima facie case to avoid summary judgment). The trial court therefore did not err in granting C. Desai, Inc.'s motion for summary judgment.[3] Accordingly, we affirm.

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JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

[3]Although Dube discusses whether he was eligible for employment in the United States, whether C. Desai, Inc. knew of his expectancies, and whether C. Desai, Inc. improperly interfered with those expectancies, the trial court did not expressly base its decision on those issues and we need not review them to uphold the trial court.

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J. WILLIAM BRAMMER, JR., Judge